

PATENT
Atty. Dkt. No. STRR/0004.C1**REMARKS**

This is intended as a full and complete response to the Office Action dated December 2, 2004, having a shortened statutory period for response set to expire on March 2, 2005, which period has been extended to May 2, 2005. Please reconsider the claims pending in the application for reasons discussed below.

Claims 1-19 were previously cancelled, and claims 20-35 remain pending in this application and are shown above. Also, new claims 36-40 have been added, directed to different embodiments of the ampoule opener, and those claims are similar in many respects to claim 20. Claims 21-23, 25-32 and 35 have been withdrawn by the Examiner. Claims 20, 24, 33 and 34 have been rejected by the Examiner. Reconsideration of the rejected claims is requested for reasons presented below, and the remarks also set forth reasons why the new claims should be allowed.

Amendments

Applicant has amended the title of the application, amended certain claims (20, 31, 33 and 35) and added new claims 36-40. No new matter has been added.

Section 112

Claim 33 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite, since "the neck portion" lacked antecedent basis. Claim 33 has been amended to fix that problem, and also to provide additional clarity to the claim, particularly in view of the amendment to claim 20, which refers to the rib. As amended, Applicant submits claim 33 is allowable.

Claim 34 was objected to because of certain informalities, on grounds that the phrase "an open housing end and a closed housing end" should read "the open housing end and the closed housing end." The claim was amended in that manner, and also the phrase "an enclosed cavity" was replaced with "the enclosed cavity," since "an enclosed cavity" was already positively recited in the base claim 20.

Section 102

Claims 20 and 24 were rejected under 35 USC § 102 over Morbeck (U.S. Patent 3,380,608). Applicant submits the original claims are distinguishable over Morbeck on grounds that the inner cavity of the Morbeck structure is not "shaped to receive a portion of an ampoule." This application provides a special definition for ampoule, namely, "a small, hermetically sealed

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vial, typically made of glass, usually holding a single dose of a solution used for hypodermic injection" (Application page 15, paragraph [0054]). But nothing in Morbeck refers to ampoules, nor is there any indication that the "molded integral cap and container" described therein is necessarily "shaped to receive a portion of an ampoule." Therefore, that limitation is not expressly or inherently disclosed and there can be no anticipation.

Nevertheless, claim 20 (and, indirectly, claim 24) has been amended by, among other things, reciting "at least one inner rib that circumscribes at least a portion of the inner housing surface proximate the open housing end." The Examiner stated, in connection with claims 33-34, that Morbeck does not disclose an inner rib. The Applicant agrees, and also submits that nothing in Morbeck suggests, or teaches the rib recited in amended claim 20. Nor is there any motivation to incorporate such a rib. (Additional remarks relating to inner ribs are set forth below in connection with claim 33-34, and those remarks are incorporated herein by reference.) Therefore Applicant submits that claim 20 is patentable as amended, and allowance is requested.

Section 103

Claims 33-34 were rejected under 35 U.S.C. § 103 over Morbeck together with an alleged Official Notice. Specifically, the Examiner stated that

it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide at least one inner rib on the container in Morbeck since the examiner takes Official Notice on the use of inner ribs as old and well known in the container art for the purpose of adding strength to container walls.

(Office Action, page 3.)

In the first place, Applicant traverses that the proposed "Official Notice" qualifies as prior art. Applicant disagrees with the Examiner's reliance on the "Official Notice" provision of the M.P.E.P. to give prior art status to very particularized information that the Examiner then applied to the Morbeck reference in a very specific manner, e.g., a specific type of rib. As stated in M.P.E.P. 2144.03, "Official Notice" is limited to facts that are "common knowledge in the art." There is no evidence that it is "common knowledge" among those in the art of making ampoule opening devices to incorporate a specific type of rib to a particular place in a molded container such as that shown in Morbeck. In accordance with M.P.E.P. 2144.03, Applicant respectfully requests that the Examiner provide evidence supporting the asserted Official Notice, i.e., the particular rib that is recited in claim 20 as amended.

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Even if the Examiner can show that it is common knowledge to generally add a rib to a container for reinforcement purposes, there is no evidence that it is common knowledge to add a rib to an ampoule opener, i.e., a structure having (among other attributes) a cavity "shaped to receive a portion of an ampoule." Nor is there evidence that it is common knowledge that such a rib is necessarily an "inner rib" (as opposed to an outer rib). Nor is there evidence of common knowledge to provide such an inner rib to an ampoule opener such that it "circumscribes at least a portion of the inner housing surface proximate the open housing end." The primary purpose of the inner rib is to encircle and clamp the neck portion of the ampoule, thus securing it for easier breaking. (See Application page 18, paragraph [0062].) This is totally different than the purpose of the rib as proposed by the Examiner, i.e., for reinforcement.

Thus, Applicant submits that there is no prima facie basis in the prior art for rejecting the claims for obviousness under 35 U.S.C. § 103, and Applicant requests allowance of the claims.

New Claims 36-41

As noted above, Applicant has added new claims 36-40, drawn to cover different specific embodiments (versions) of ampoule openers, or different aspects of a particular type of ampoule opener. Applicant submits those claims are patentable over Morbeck and other prior art. First, and most fundamentally, the claims are directed to an "ampoule opener" that is "shaped to receive a portion of an ampoule." There is no evidence that Morbeck is capable of opening an ampoule, nor is there any suggestion of modifying Morbeck to do so. Further, the other limitations set forth in those claims are not disclosed or suggested by Morbeck either.

Claim 36 recites an ampoule opener that is transparent and includes an inner rib proximate the open end of the housing member.

Claim 37 recites the ampoule opener of claim 36 with a lid.

Claim 38 recites the ampoule opener of claim 37 with a latch.

Claim 39 recites the ampoule opener of claim 36 in combination with one or more other ampoule openers, i.e., an assembly, as illustrated in Figure 11.

Claim 40 is an ampoule opener having a detailed set of features, including transparency, an inner rib, a lid, a latch and two sections that close to form a cavity for holding the ampoule tip.

Neither Morbeck nor other prior art discloses or suggests the subject matter of claims 36-40.

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In conclusion, the references cited by the Examiner, alone or in combination, do not teach, show, or suggest the claimed subject matter, as amended.

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to the Applicant's disclosure than the primary references cited in the Office Action. Therefore, Applicant believes that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

Having addressed all issues set out in the Office Action, Applicant respectfully submits that the claims are in condition for allowance and respectfully request that the claims be allowed.

Respectfully submitted,



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